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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA-HQ-OW-2009-0596; FRL-9611-1]

RIN 2040-AF36

Effective Date for the Water Quality Standards for the State of Florida's Lakes and Flowing Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to extend the March 6, 2012 effective date of the “Water Quality Standards for the State of Florida’s Lakes and Flowing Waters; Final Rule” (inland waters rule) for ninety days to June 4, 2012. EPA’s inland waters rule included an effective date of March 6, 2012 for the entire regulation except for the site-specific alternative criteria provision, which took effect on February 4, 2011. This proposal to revise the effective date for the inland waters rule does not affect or change the February 4, 2011 effective date for the site-specific alternative criteria provision. In this proposal, EPA is requesting comment on extending the effective date for the “Water Quality Standards for the State of Florida’s Lakes and Flowing Waters; Final Rule.”

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2009-0596, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. E-mail: ow-docket@epa.gov.
3. Mail to: Water Docket, U.S. Environmental Protection Agency, Mail code: 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Docket ID No. EPA-HQ-OW-2009-0596.
4. Hand Delivery: EPA Docket Center, EPA West Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. EPA-HQ-OW-2009-0596. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2009-0596. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket

and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyright material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Docket Facility. The Office of Water (OW) Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is 202-566-1744 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

FOR FURTHER INFORMATION CONTACT: For information concerning this rulemaking, contact: Tracy Bone, U.S. EPA, Office of Water, Mailcode 4305T, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; telephone number 202-564-5257; email address: bone.tracy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

Does this Action Apply to Me?

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging nitrogen or phosphorus to lakes and flowing waters of Florida could be indirectly affected by this rulemaking because water quality standards (WQS) are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to lakes and flowing waters in the State of Florida.
Municipalities	Publicly-owned treatment works discharging pollutants to lakes and flowing waters in the State of Florida.
Stormwater Management Districts	Entities responsible for managing stormwater runoff in Florida.

This table is not intended to be exhaustive, but rather provides a guide for entities that may be directly or indirectly affected by this action. This table lists the types of entities of which EPA is now aware that potentially could be affected by this action. Other types of entities not listed in the table, such as nonpoint source contributors to nitrogen/phosphorus pollution in Florida's waters may be affected through implementation of Florida's water quality standards program (i.e., through Basin Management Action Plans (BMAPs)). Any parties or entities conducting activities within watersheds of the Florida waters covered by this rule, or who rely on, depend upon, influence, or contribute to the water quality of the lakes and flowing waters of Florida, may be affected by this rule. To determine whether your facility or activities may be affected by this action, you should carefully examine the language in 40 CFR 131.43, which is the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

II. Background

On December 6, 2010, EPA's final inland waters rule, entitled "Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Final Rule", was published in the Federal Register at 75 FR 75762, and codified at 40 CFR 131.43. The final inland waters rule established numeric nutrient criteria in the form of total nitrogen, total phosphorus, nitrate+nitrite, and Chlorophyll a for the different types of Florida's inland waters to assure attainment of the State's applicable water quality designated uses. More specifically, the numeric nutrient criteria translate Florida's narrative nutrient provision at Subsection 62-302-530(47)(b), Florida Administrative Code (F.A.C.), into numeric values that apply to lakes and springs throughout

Florida and flowing waters outside of the South Florida Region. (EPA has distinguished the South Florida Region as those areas south of Lake Okeechobee and the Caloosahatchee River watershed to the west of Lake Okeechobee and the St. Lucie watershed to the east of Lake Okeechobee.) This final action seeks to improve water quality, protect public health and aquatic life, and achieve the long-term recreational uses of Florida's waters, which are a critical part of the State's economy.

As stated in 40 CFR 131.43(f), 75 FR 75807, the rule is scheduled to take effect on March 6, 2012, except for the site-specific alternative criteria (SSAC) provision at 40 CFR 131.43(e), which took effect on February 4, 2011. EPA selected the March 6, 2012 effective date for the criteria part of the rule to allow time for EPA to work with stakeholders and the Florida Department of Environmental Protection (FDEP) on important implementation issues, to help the public and all affected parties better understand the final criteria and the bases for those criteria, and for EPA to engage and support, in full partnership with FDEP, the general public, stakeholders, local governments, and sectors of the regulated community across the State in a process of public outreach education, discussion, and constructive planning. 75 FR 75787.

III. Proposed Effective date

A. Current Inland Waters Rule Effective Date and Rationale

The current effective date for the inland waters rule is March 6, 2012 except, as noted earlier, for the site-specific alternative criteria (SSAC) provision, which became effective February 4, 2011. As mentioned earlier, in the December 6, 2010, preamble for the final rule (75 FR 75762, 75787), the Agency noted its desire to actively engage in partnership with the Florida

Department of the Environment (FDEP) to support FDEP's implementation of the new criteria before the criteria take effect. The 15-month period between publication and the effective date was to allow for education and outreach efforts targeted at the major interest sectors and geographic locations throughout the State of Florida, including training and guidance concurrent with data synthesis and analysis to support potential SSAC development; public comment and response period to allow development of effective guidance, training and possible workshops to run concurrent with SSAC submittals; finalizing guidance materials along with development of rollout strategies concurrent with notice and comment of SSAC guidance; and finally statewide education and training on guidance and contingency planning. These actions were considered reasonably necessary to ensure application of programs to achieve criteria in a manner to make the most efficient use of limited resources and to gain the broadest possible support for timely and effective action upon reaching the effective date of the criteria.

Since December of 2010, EPA at both the Headquarters and Regional levels has worked in collaboration with the State on outreach and education efforts including: participating in multiple meetings with a wide variety of local officials from Florida, conducting various webinars and meetings with respect to the final rule, including the SSAC provision, and participating in technical meetings with various stakeholder groups. EPA has met with a wide range of stakeholders and local officials, including: State, county and city representatives, utility managers and water districts, and representatives from industry and agriculture. Between November 2010 and March 2011, EPA conducted five webinars discussing various aspects of the final rule for lakes, streams and springs and its implementation, with participation by over 750 people from a wide range of stakeholder groups in Florida. EPA met with and/or held conference calls with local officials from Palm Beach County, Jacksonville, Gainesville, Polk

County and several of the State's Water Management Districts. EPA hosted officials from the Florida League of Cities and the Association of Counties for a day-long meeting to address questions and concerns from those officials. EPA also participated in conferences sponsored by organizations such as the League of Cities, Association of Counties, Florida Stormwater Association, Air and Water Managers Association, and the Florida Engineering Society. EPA has been coordinating closely with FDEP on issues related to implementation of the rule and supporting State efforts to develop State-adopted numeric nutrient criteria.

B. Rationale for Extending the March 6, 2012 Effective Date

EPA is proposing to extend the effective date of the inland waters rule (with the exception of the SSAC provision, which is already in effect) for ninety days, to June 4, 2012, for the reasons discussed in this section.

Since the promulgation of the December 6, 2010 final rule for Florida's inland waters, EPA has continued to work in close coordination with the State of Florida as the State develops its own rulemaking for numeric nutrient criteria that are consistent with requirements of the CWA, address the water quality needs of the State, and support effective permit implementation, water body assessment and listing, and development of TMDLs. On November 10, 2011, FDEP proposed numeric nutrient criteria and related provisions for inland as well as a number of estuarine waters for the State, which were published in the *Florida Administrative Weekly* (Volume 37, number 45, pages 3753 - 3775). On December 8, 2011, the State's Environmental Review Commission (ERC) approved these proposed rules with additional amendments. On December 9, 2011, it is EPA's understanding that FDEP submitted the ERC-approved rules and

amendments to the Florida Legislature for ratification during the 2012 legislative session. Since the ERC approved additional amendments to the rules that were proposed on November 10, 2011, EPA understands that FDEP must publish a notice of change, which is expected to be included in the December 23, 2011 edition of the *Florida Administrative Weekly*.

At the time of today's proposed effective date extension, the State rulemaking and legislative process is ongoing and its ultimate resolution is uncertain. Nonetheless, final State action in this area could have significant implications for many interested parties and members of the public in the State on the need to move forward with implementation of EPA's inland water numeric criteria in the event that alternative Florida numeric nutrient criteria are established that assure attainment of State water quality designated uses consistent with applicable CWA provisions. Successful State action on this issue could also affect the obligations and expectations of a wide range of affected stakeholders whose actions relate to the discharge or contribution of nitrogen and phosphorus pollution to State waters. The last day of Florida's 2012 regular legislative session is March 9, 2012. Extending the effective date of EPA's inland waters rule would avoid the confusion and inefficiency that may occur should Federal criteria become effective while State criteria are being finalized by the State and reviewed by EPA. If the State decides to not proceed with final numeric nutrient criteria before EPA finalizes this proposal to extend the effective date, EPA anticipates not finalizing an extension of the March 6, 2012, effective date.

However, if the State rulemaking process continues as planned toward FDEP's submission of new or revised water quality standards to EPA for review pursuant to CWA section 303(c), EPA anticipates and proposes extending the March 6, 2012 effective date by ninety days to June 4, 2012, to allow the State to complete its process. Should the State decide

not to proceed with final numeric nutrient criteria after the ninety-day extension is finalized, EPA anticipates the inland waters rule would become effective at the end of the ninety days, on June 4, 2012. If, however, the State rulemaking process results in final and effective numeric nutrient criteria after EPA has finalized the ninety-day extension, EPA would expect to propose a further extension of the effective date of the inland waters rule, to allow FDEP to submit the rule to EPA for review and action under section 303(c) of the CWA, for EPA to complete its review of the State rule, and for EPA to withdraw any Federal numeric nutrient criteria corresponding to any State-adopted numeric nutrient criteria that have been approved by EPA.

Should EPA decide to extend the effective date of the inland waters rule, the Agency will continue to work with Florida towards implementation of Federal or State numeric nutrient criteria. As EPA stated in the preamble to the final inland waters rule, the opportunity that is presented by numeric nutrient criteria -- for substantial nitrogen and phosphorus loadings reductions in the State -- “would be greatly facilitated and expedited by strongly coordinated and well-informed stakeholder engagement, planning, and support before a rule of this significance and broad scope begins to take effect and be implemented through the State’s regulatory programs.” 75 FR 75787.

EPA solicits comments regarding the proposed extension of ninety days, to June 4, 2012, for the effective date of the inland waters rule. EPA also requests comment on whether a longer extension should be provided to allow Florida more time to complete the State rulemaking process.

IV. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:
Improving Regulation and Regulatory Review*

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), since it merely extends the effective date of an already promulgated rule, and is therefore not subject to review under Executive Order 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action does not impose any information collection burden, reporting or record keeping requirements on anyone.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small

organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This proposed rule does not establish any requirements that are applicable to small entities, but rather merely extends the date of already promulgated requirements. Thus, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives, and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the

UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. This proposed rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132 (Federalism)

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely extends the effective date of an already promulgated regulation.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal

officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement. However, the rule will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law.

In the State of Florida, there are two Indian Tribes, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, with lakes and flowing waters. Both Tribes have been approved for treatment in the same manner as a State (TAS) status for CWA sections 303 and 401 and have federally-approved WQS in their respective jurisdictions. These Tribes are not subject to this proposed rule. This rule will not impact the Tribes because it merely extends the date of already promulgated requirements.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866 and because the Agency does not believe this action includes environmental health risks or safety risks that would present a risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This action is not subject to E.O. 12898 because this action merely extends the effective date for already promulgated requirements.

List of Subjects in 40 CFR Part 131

Environmental protection, Water quality standards, Nitrogen/phosphorus pollution, Nutrients, Florida.

Dated: December 16, 2011.

Lisa P. Jackson,
Administrator.

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